



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/366,351	08/02/1999	DUANE GALENSKY	GALENSKY5-2	2958

7590 09/18/2002

MORGAN & FINNEGAN LLP
345 PARK AVENUE
NEW YORK, NY 101540053

EXAMINER

MEKY, MOUSTAFA M

ART UNIT PAPER NUMBER

2153

DATE MAILED: 09/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/366,351

Applicant(s)

GALENSKY ET AL.

Examiner

Moustafa M Meky

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 2153

1. The response filed 4/12/2002 has been received and considered by the examiner.
2. Claims 1-62 are presenting for examination.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claims 1- 12, 17-29, 34-41, 46-62 are rejected under 35 U.S.C. 102(a) & (e) as being anticipated by Janky (US Pat. No. 5,914,941).
5. As to claims 1-12, 17-19, Janky shows in Figs 1-2, a portable device 44 (see the abstract, lines 1-10, lines 14-18, col 1, lines 8-14, col 2, lines 31-38, col 5, lines 29-67, col 6, lines 21-67, col 7, lines 1-14, lines 33-42, col 8, lines 7-15, col 10, lines 9-14, lines 51-60, col 13, lines 63-67) for receiving and playing multimedia file (such as audio and video file) over a wireless telecommunication network 18, the device 44 comprising:
 - * a microprocessor 66, see col 9, lines 26-42;
 - * a transceiver (not shown) for receiving successive blocks of digitized and compressed data from the file over the network 18, see col 8, lines 34-38, lines 47-49;

Art Unit: 2153

- * a buffer 60 for temporarily storing the received blocks of data, see col 9, lines 3-6;
- * a non-volatile memory 50 for storing compressed data blocks, see col 8, lines 57-66, col 9, lines 3-6;
- * a server (represented by the program material 12), see col 7, lines 53-67, col 8, lines 1-3, col 11, lines 39-45, col 12, lines 26-29;
- * a memory within the Audio Output Conditioning 52 for storing decompressed data blocks, see col 12, lines 60-67, col 13, lines 1-11; and
- * an output (speaker, headphone 56 and/or display), see col 8, lines 66-67, col 9, line 2. Also, see col 14, lines 15-62, col 15, lines 17-67, col 16, col 17, col 18.

6. As to claims 20-29, 34-41, 46-62, the claims are similar in scope to claims 1-12, 17-19, and they are rejected under the same rationale.

Therefore, it can be seen from paragraphs 5-6 that Janky anticipates claims 1- 12, 17-29, 34-41, 46-62.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2153

8. Claims 13-16, 30-33, 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janky (US Pat. No. 5,914,941).

9. As to claims 13-16, Janky shows in Figs 1-2, a portable device 44 (see the abstract, lines 1-10, lines 14-18, col 1, lines 8-14, col 2, lines 31-38, col 5, lines 29-67, col 6, lines 21-67, col 7, lines 1-14, lines 33-42, col 8, lines 7-15, col 10, lines 9-14, lines 51-60, col 13, lines 63-67) for receiving and playing multimedia file (such as audio and video file) over a wireless telecommunication network 18 as been discussed in paragraph 5 above. Janky does not teach monitoring the buffer 60 in order to adjust the transmission rate. Monitoring a buffer within a device to adjust data transmission rate was well known in the art (official notice is taken). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Janky to monitor the buffer 60 to adjust the rate of the data transmission in order to support the continuation of the data (the buffer would not overrun and/or underrun).

10. As to claims 30-33 & 42-45, the claims are similar in scope to claims 13-16, and they are rejected under the same rationale.

Therefore, it can be seen from paragraphs 9-10 that the modified system of Janky teaches the limitations of claims 13-16, 30-33, 42-45.

Art Unit: 2153

11A. The applicant argues in his remarks that Janky does not teach the following:

1) streaming multimedia audio/ video file over a wireless network, where the file is temporarily stored in a buffer; and

2) regulating the transmission rate based upon the size and the content of the buffer.

11B. In response to the above argument:

* As to 1, Janky teaches streaming audio/video file over a wireless network 18, where the file is stored in the buffer 60, see col 8, lines 34-38, lines 47-49, col 9, lines 3-6, col 12, lines 26-36, col 13, lines 63-67, col 14, lines 1-2, col 14, lines 52-55, lines 66-67, col 15, lines 1-4.

* As to 2, the modified system of Janky teaches the limitation of regulating the transmission rate based upon the size and the content of the buffer as been discussed in paragraph 9 above.

Therefore, the applicant's arguments must fail based upon the above discussion.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Moustafa M. Meky whose telephone number is (703) 305-9697. The examiner can normally be reached on week days from 7:30 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on (703) 305-4792. The fax phone number for this Group is (703) 308-9051.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Art Unit: 2153

Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:

(703) 305-305-7201 (for informal or draft communications, please label

"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., Sixth Floor (Receptionist).

M.M.M

September 16, 2002


MOUSTAFA M. MEKY
PRIMARY EXAMINER